LET THEM SPEAK

By some calculations they number 300 million, living in the farthest reaches of the globe. Some of them constitute well-defined groups with distinct political or geographical identities. Others are obscure and may not even be known in their own countries.

Inhabiting bleak, Arctic environments or lush, tropical jungles, many have been forced to retreat into enclaves, and some live under threat of extinction. Invariably, their way of life is jeopardized by modern technologies, land-use policies and attempts at integration under paternalistic systems.

"They" are the indigenous, or "native", peoples found in many parts of the world. The march of colonialism, the spread of religion and the growth of trade led to waves of settlers expropriating large tracts of land. In the process, indigenous groups and tribes saw their traditional culture eroded and their landholdings confiscated or signed away as part of the economic coercion to which they were subjected. For many, extermination became a grim reality.

In the post-war era of the past 40 years, the growing awareness about human rights in general was not matched by parallel progress in enhancing the rights of indigenous groups. But a new activism by Indian, tribal and aboriginal groups in the last decade has given much-needed momentum to the debate over the rights of "indigenous" peoples. The shop-worn stereotypes of indigenous peoples as being "backward" and resistant to change have been challenged successfully at the national and international levels. One can discern a renaissance in indigenous cultures and a self-confidence in the way in which these groups have taken up the political cudgel.

Indigenous peoples are making headlines nowadays on two major counts: their rejection of the concept of integration and their concern over the adverse effects of large-scale economic development projects on land they have inhabited for centuries. Adding to their plight, they are often hampered in attempts to be recognized as indigenous. While ancestry, distinctive culture, language, residence and group self-identification are often a measure of such status, the spectrum of communities that may fall into this category complicates the already difficult task of reaching an acceptable definition.

Certain States reject the idea that there are any indigenous peoples in their territories. Still other countries, while acknowledging the existence of indigenous groups, would prefer to categorize them as minorities. They argue that the cohesiveness of their societies is still too fragile and that ethnic, linguistic and racial diversities have to be overcome in the process of building the nation-State.

DIVERSE REGIONAL MANIFESTATIONS, SIMILAR UNDERLYING PROBLEMS

The rights of indigenous peoples have often been forced to the top of the national agenda in industrialized nations in the face of considerable resistance from official authorities. In North America, as elsewhere, the rights of the indigenous, such as Indians and the Inuit, have been articulated by those peoples themselves, with state and federal governments as the target. An article in the *Virginia Journal of International Law* surveyed the efforts undertaken outside the United Nations to highlight the dilemma faced by the Inuit, the term by which the Eskimos prefer to be addressed:

"The number of issues affecting Inuit and other northern peoples is rapidly mounting. Examples include ocean dumping, Arctic haze, acid rain, militarization, migratory birds, endangered and threatened species and resource development. What is disturbing is the extent to which indigenous peoples are shut out from participating in and contributing to numerous national and international institutions."

UNITED NATIONS

The Inuit Circumpolar Conference, an organization based in Canada, was responsible for two major conferences in 1977 and 1980 which served to catalyse Inuit involvement in protecting their environment and way of life, as well as to give them more international visibility. While no nation has yet recognized land rights to the absolute satisfaction of the indigenous peoples, recent Canadian legislation provides an example of a possible compromise. The Cree-Napaski Act of 1984 leaves basic ownership rights in the possession of Québec, but the exclusive use of and benefits from the land remain with the Indians. The Indian groups administer, manage and use the land and resources as if they were owners. Although Québec owns all mineral and subsurface rights, it must secure Indian permission to exploit the resources and must provide compensation for their use. The concerns of Canada's indigenous people are not a closed chapter, however, and appeals have been made for active negotiations to resume between Government representatives and indigenous groups.

Indigenous groups are scattered across the Old World and the New and have had to assert their rights in industrialized nations as much as in developing countries. For instance, hundreds of different tribal communities with varying dialects, social organization and political systems are to be found throughout Asia. India, though it is not the only Asian country with indigenous groups, is by far the largest such country with the most complex social structure. Tribal groups form a minority in many states but are in the majority in north-eastern states such as Nagaland (84 per cent) and Meghalaya (80 per cent).

Government officials in India have pointed out that indigenous people resettled as a result of dam-building and irrigation schemes have been compensated for loss of land or even had land partially restored to them. Indian Government policy provides for employment and education quotas as well as other advancement schemes under a Scheduled Tribes Act aimed at remedying injustices done to indigenous groups. The use of force against tribal groups has been investigated, especially when it involves law enforcement authorities. And the Government has tried to encourage the preservation of traditional cultures.

The indigenous groups that dwell in the Amazon have also been in the public eye as their way of life becomes jeopardized by rapid modernization. The majority of the Brazilian Indians (61 per cent) live in Amazonia, in small, scattered tribal groups and are largely dependent on the tropical forest for cultural and economic survival. The greater part of the Amazon forest is in Brazil and, in 1970, when the Government began to encourage clearing of the Amazon lands, the total indigenous population numbered 120,000.

The Brazilian Government has recently become aware of the impact of its National Integration Plan, involving the resettlement of peasants, and has tried to reverse the consequences. The Government has embarked on development projects to improve the way in which many indigenous people live. It has also made an effort to encourage private investment in areas that would be of benefit to indigenous people hoping to boost the local economy and, by extension, their standard of living.

When discussing indigenous groups, it is often overlooked that their symbiosis with the land is very direct and crucial. Land is owned communally and no individual can permanently lay claim to it on their own behalf. The tribe is the trustee of the land it occupies, and this includes not only its living members but also ancestors and future generations. For indigenous peoples, land and blood-ties are irrevocably linked. Many indigenous people follow a land-based religion and, therefore, need to remain on land traditionally held by them to be able to continue to practise their faith.

In some instances, indigenous groups have legal status conferred on them, which frees them from certain obligations but may limit their enjoyment of certain rights. Another approach is for the State to ensure all the rights and privileges that are accorded to individual inhabitants but still take account of the special needs of indigenous

peoples. The drawback of these policies has been that they do not address satisfactorily the issues of autonomy and self-determination.

THE UNITED NATIONS: A GLOBAL PLATFORM

Action by the United Nations seems to have reached a major turning-point: we have seen the first stirrings of global interest in indigenous groups as a legal entity.

The United Nations is too young to have been, historically, in the vanguard of action by the community of nations on behalf of indigenous peoples. Yet as early as 1921, the International Labour Organisation (ILO) carried out a series of studies on indigenous workers and, subsequently, set up a Committee on National Labour. This was followed by a Committee of Experts on Indigenous Labour in 1951 and the publication of a comprehensive reference book in 1953 entitled *Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries*, which amounted to a survey of indigenous peoples and the assistance provided to them.

A pioneer effort in international legislation addressing indigenous rights was made by ILO Convention No. 107 in 1957. Though viewed as progressive in the 1950s, its shortcomings soon became apparent because it advocated assimilation and non-discrimination even as it recognized the right of collective and individual land-ownership, customary laws and compensation. In 1986, a new initiative was undertaken to revise the Convention, which had been criticized by indigenous groups and non-governmental organizations as paternalistic.

In June 1989, the International Labour Conference adopted the revised ILO Convention on Indigenous and Tribal Peoples (No. 169). This Convention is designed to promote greater consultation between communities and Governments and eliminate the provisions that suggested absorption. It also addresses collective land rights in terms of ownership and possession, the right to natural resources, and rights regarding the removal and relocation of indigenous people from land they traditionally occupy. By virtue of being a legally binding document, the Convention involved reaching a consensus to allow the widest possible ratification.

It has been criticized on the grounds that the content of the Convention was diluted in the scramble to reach a compromise. The standards it contains, according to some opinions, are too low to guarantee effectively the rights of indigenous peoples. Furthermore, some felt that the direct involvement of indigenous groups had been inadequate. A few indigenous representatives saw it as a welcome addition to international human rights law, even if its provisions needed to be expanded.

One of the wrinkles to be ironed out was the concern of the indigenous groups that they be described as peoples, not populations. The term "peoples" was adopted with the qualification that it had no further implications under international law which would ordinarily connote the right to self-determination. An ILO specialist, when asked whether any of the groups involved in negotiating the Convention were disappointed in the outcome, replied: "Well, I think everyone is in some way or another. Some because it, in their eyes, goes too far; some because it goes not nearly far enough."

The spotlight in the 1980s has been on the United Nations Commission on Human Rights. As early as 1971, its Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur to study this controversial issue. José R. Martínez Cobo, of Ecuador, completed his "Study on the Problem of Discrimination against Indigenous Populations" in 1983. It highlighted international concern over the situation of indigenous peoples and spurred non-governmental organizations to action.

A Working Group on Indigenous Populations was also created, in 1982, to review developments pertaining to protection of indigenous rights. The Working Group is pivotal to United Nations efforts to forge ahead with constructive action to empower and protect indigenous peoples. At its first session, the Group took the unprecedented step

of allowing oral interventions and written information from all indigenous organizations, rather than limiting participation to those with formal consultative status. As a result, recent sessions have seen more than 350 persons, most of them representatives from indigenous organizations, taking part in the deliberations.

Starting with the modest approach of providing a platform for indigenous peoples to voice their concerns, the Working Group has built up a formidable resource base detailing the diverse problems experienced by indigenous peoples around the world. Among the most frequent complaints are arbitrary arrests, torture, killing, dispossession of indigenous lands, inadequate social services, economic deprivation and destruction of cultural identity. Land rights and self-determination, complemented by cultural protection, remain fundamental demands by indigenous groups to resist assimiliation or integration policies.

In addition to chronicling the plight of indigenous peoples, since 1985 the Working Group has been preparing a draft declaration on the rights of indigenous peoples. In the preliminary stages, a series of "draft principles" were elaborated and the Chairwoman/Rapporteur, Erice-Irene A. Daes, of Greece, has prepared a full draft for upcoming sessions. A Special Rapporteur has prepared an outline of a "Study on Treaties, Agreements, and Other Constructive Arrangements between States and Indigenous Populations" and will submit a preliminary report to the Sub-Commission at its 1991 session.

Another encouraging development was the convening by the Centre for Human Rights at Geneva, in January 1989, of a Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations between Indigenous Peoples and States. Of the 25 experts, 10 were indigenous people as was the elected Rapporteur, Ted Moses of the Grand Council of the Crees (of Québec). In the 1989 session of the Working Group, as an indication of its scope, an impressive array of such groups took part in the exchange of views: the Inuit Circumpolar Conference, the Nordic Sami Council, the Centre for Tribal Conscientization (India), the Committee to Defend Black Rights (Australia), the Organización Miskito Misata (Nicaragua) and the World Council of Indigenous Peoples were among those which contributed to the discussion. Appreciation was expressed for the help given to indigenous persons from the resources of the United Nations Voluntary Fund for Indigenous Populations, set up in 1985, to enable them to travel to the meetings. This marks a new trend towards increasing the visibility and participation of indigenous people in various human rights forums of the United Nations itself.

After so many decades of obscurity, there is now an animated dialogue which embraces the views of indigenous people themselves. Their ideas are being aired and could lead to new initiatives that would enhance observance of their rights. The enthusiasm shown so far augurs well for the proposed designation of an International Year of the World's Indigenous People. Without doubt we are witnessing the dawn of an era where indigenous peoples will play a prominent role in their own right.

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